

United States Court of Appeals for the Ninth Circuit

EPIC GAMES, INC.,
Plaintiff, Counter-defendant – Appellant, Cross-Appellee,

v.

APPLE INC.,
Defendant, Counterclaimant – Appellee, Cross-Appellant.

Appeal from the U.S. District Court
for the Northern District of California
The Honorable Yvonne Gonzalez Rogers (No. 4:20-cv-05640-YGR-TSH)

**EPIC GAMES, INC.’S UNOPPOSED
MOTION TO EXCEED TYPE-VOLUME LIMITATIONS**

Christine A. Varney
Katherine B. Forrest
Gary A. Bornstein
Antony L. Ryan
Yonatan Even
Omid H. Nasab
CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, NY 10019-7475
(212) 474-1000

Paul J. Riehle
FAEGRE DRINKER BIDDLE & REATH
LLP
Four Embarcadero Center
San Francisco, CA 94111-4180
(415) 591-7500

Thomas C. Goldstein
GOLDSTEIN & RUSSELL, P.C.
7475 Wisconsin Avenue, Suite 850
Bethesda, MD 20814-6902
(202) 362-0636

Counsel for Appellant, Cross-Appellee Epic Games, Inc.

Pursuant to Federal Rules of Appellate Procedure 27 and 32 and Circuit Rule 32-2(a), and for the reasons stated in the accompanying Declaration of Katherine B. Forrest (“Forrest Decl.”), Appellant, Cross-Appellee Epic Games, Inc. (“Epic”) respectfully moves this Court for permission to exceed the type-volume limitations for its response and reply brief by 8,940 words. In accordance with Circuit Rule 32-2(a), a copy of the proposed brief and a Form 8 certification are submitted with this motion. Appellee, Cross-Appellant Apple Inc. (“Apple”) does not oppose this motion. Forrest Decl. ¶ 6.

Ordinarily, a party filing a response and reply brief in a matter involving a cross-appeal is entitled to 14,000 words to address its adversary’s 16,500-word brief. Cir. R. 28.1-1(b)-(c). On March 28, 2022, the Court granted Apple’s motion to exceed the type-volume limitations by 8,980 words. Forrest Decl. ¶ 3. Apple filed a principal and response brief of 25,480 words, which was predicated on the complexity of this matter and the volume of *amicus curiae* submissions supporting Epic’s position. Epic’s counsel have worked diligently to attempt drafting a response and reply brief within the word limits of this Court’s rules, but Epic requires additional words to adequately address the assertions and

responses made by Apple in its enlarged brief, as well as the assertions made in the 15 *amicus curiae* briefs filed supporting Apple's position. Forrest Decl. ¶¶ 4-5.

For these reasons, Epic respectfully requests leave to file an enlarged response and reply brief.

May 25, 2022

Respectfully submitted,

/s/ Katherine B. Forrest
Katherine B. Forrest

Christine A. Varney
Gary A. Bornstein
Antony L. Ryan
Yonatan Even
Omid H. Nasab
CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, NY 10019-7475
(212) 474-1000

Paul J. Riehle
FAEGRE DRINKER BIDDLE & REATH
LLP
Four Embarcadero Center
San Francisco, CA 94111-4180
(415) 591-7500

Thomas C. Goldstein
GOLDSTEIN & RUSSELL, P.C.
7475 Wisconsin Avenue, Suite 850
Bethesda, MD 20814-6902
(202) 362-0636

Counsel for Appellant, Cross-Appellee Epic Games, Inc.

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the type-volume limitation of Circuit Rule 27-1(1)(d) and Circuit Rule 32-3 because it contains 245 words, excluding the parts of the motion exempted by Federal Rule of Appellate Procedure 32(f) and Circuit Rule 27-1(1)(d).

I certify that this motion complies with the typeface requirements of Federal Rule of Appellate Procedure 27(d) because this motion has been prepared in a proportionately spaced 14-point Century Schoolbook typeface.

May 25, 2022

/s/ Katherine B. Forrest
Katherine B. Forrest

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Epic Games, Inc.'s Motion To Exceed Type-Volume Limitations with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on May 25, 2022. All participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

May 25, 2022

/s/ Katherine B. Forrest
Katherine B. Forrest